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In the Supreme Court
of the United States

No. 301, OCTOBER TERM, 1962

GEORGE WEIGEL,
Petitioner,

v.

PARTENWEEDEREI, MS BELGRANO and RUDOLPH A. OETKER,
Respondents,

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Petitioner prays that this Court grant rehearing of its order of October 8, 1962, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the ~~Second~~ NINTH Circuit in the above-entitled case as prayed for in the petition heretofore filed herein.

REASONS FOR GRANTING THE REHEARING AND ISSUING THE WRIT

At the time of the preparation and filing of the petition for a writ of certiorari herein, counsel for petitioner

were not aware of the decision of the Court of Appeals for the First Circuit in *Waterman Steamship Corp. vs. Gutierrez*, 301 F2d 415 (CA 1, 1962), which was handed down on April 11, 1962. Contemporaneously with its denial of certiorari in the instant case, this Court granted a petition for a writ of certiorari in the *Gutierrez* case, No. 229, October Term, 1962.

The principal issues in the instant case are whether a longshoreman working on the dock is entitled to a warranty of the seaworthiness of the ship's gear, and the extent to which the ship owner is required to furnish a safe place to work to longshoremen working on the dock. In *Gutierrez*, the principal issues are whether a longshoreman working on the dock is entitled to a warranty of the seaworthiness of cargo being unloaded, and the extent to which the ship owner is obligated to provide a safe place to work to longshoremen working on the dock.

The similarity of the issues presented cannot be more clearly demonstrated than by reference to the questions presented for decision in the two cases, as follows:

> *WEIGEL*—"1. Is a longshoreman working on the dock, engaged in moving cargo under the ship's tackle to be loaded aboard the vessel, entitled to a warranty of the seaworthiness of the vessel?"
>
> *GUTIERREZ*—"A. Is the ship owner liable for injuries suffered by a shore-based longshoreman who is participating in the unloading operations of the ship at the time of injury?
>
> This question comprises the subsidiary questions

of (1) whether longshoremen engaged in the ship's service are entitled to the doctrine of unseaworthiness while working on shore as they are while working aboard; and, (2) whether liability of the shipowner extends to injuries occurring on shore proximately caused by unseaworthy cargo aboard or by its negligent discharge."

WEIGEL—"3. Does a ship owner owe a duty to a longshoreman working on the dock, engaged in moving cargo under the ship's tackle to be loaded aboard the vessel, to provide him with a safe place to work?"

GUTIERREZ—"B. Does the ship owner's liability for negligence terminate at the edge of the pier?

Subsidiary issues comprised in this question include the foreseeability of injury to one not aboard the vessel; the responsibility even though the area where the injury occurred is not within his power and control; and the scope and the extent of the shipowner's continuing duty to provide a safe place to work."

The similarity of the issues is further demonstrated by the fact that, in *Gutierrez*, the First Circuit placed its chief reliance upon the decision of the Ninth Circuit in this case, stating, at 301 F2d 417:

"A recent case somewhat close on the facts is Partenweederei MS Belgrano v. Weigel, 9 Cir., 1962, 299 F.2d 897. There libelant was a dock worker engaged in driving a tractor handling lumber on

> the dock which was about to be loaded onto respondent's vessel. He was struck by a defective ship's boom. The court found that libelant was not performing traditional ship's work within the scope of the obligation of seaworthiness. While the court noted a distinction between cargo not yet connected with the ship's loading gear and cargo actually being loaded, it is in common with us in recognizing limits in this area to principles of absolute liability. *In a way the facts were more favorable to libelant than in the case at bar because it was the ship's gear that was defective and not merely cargo previously aboard.*" (Emphasis supplied.)

If, as the First Circuit suggests, the facts in *Weigel* are stronger in favor of the workman than the facts in *Gutierrez*, a reversal of *Gutierrez* would indicate a reversal of *Weigel* as well. In any event, the cases present closely related problems, and should be considered together upon these issues. At the very least, a final ruling upon *Weigel* should await the outcome of *Gutierrez* since the decision in *Gutierrez* cannot help but affect the result in *Weigel* if the above-quoted "Questions" are ruled upon by this Court.

Petitioner submits that the granting by this Court of a writ of certiorari in *Gutierrez* is an intervening circumstance of substantial or controlling effect which justifies the reconsideration by this Court of the petition for writ of certiorari in this case. Cf., *Bowden* v. *Fort Smith*, 316 U.S. 584, 589 (1942), in which this Court, for similar reasons, vacated its prior denial of certiorari on its own motion.

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Ninth Circuit.

Respectfully submitted.

CLIFFORD D. O'BRIEN
Counsel for Petitioner

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

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